PROBABLE AMENDMENTS TO THE COUNTY ACT

Extracts From the Report of Former Governor Dole Which the Committee in Charge of County Law is Considering.

The recommendations of Gov. Dole, a reading of which led the House Committee on Territories to hold up the County Act for further amendment, are as follows:

On the 22d of April, 1903, "An Act providing for the organization and government of counties and districts and the management and control of public works and public institutions therein" was approved. On the same day I sent a message to the legislature, of which the following is a copy, recommending certain amendments to the said act:

I have approved the county bill "providing for the organization and government of counties and districts and the management and control of public works and public institutions therein."

There are, however, some features of the law which are, in my opinion, objectionable, and which should, for the sake of the clear understanding of such law by the public and its successful application to the objects intended, and for removing as far as possible all legal complications from the administration of public affairs under its provisions, be removed by amendment.

These objections are as follows:

Section 476 provides that "all property in the hands of any road authorities within the Territory on the 4th day of January, A. D. 1904, shall become the property of the county in which the same is located."

Section 477 provides, referring to the transfer of jail property to counties, that "all property so transferred shall be the property of the county."

Section 268, division 13, provides that "all fees or costs * * * arising from the sale or lease of property by this or any law of the Territory placed under the control of such county" "shall be payable into the treasury of the county and used for paying county expenses."

As the greater part of the property which will be turned over by the Territorial government to the counties upon their organization will be public property which was transferred by the Republic of Hawaii to the United States under the joint resolution of annexation, and by the United States placed in charge of the government of the Territory, to be cared for and maintained by it for its own use "until otherwise provided by Congress or taken for the uses and purposes of the United States" (section 91, organic act), the above provisions making such property the property of the counties, to be sold or leased by them, is an attempt to amend section 91 of the organic act, and also section 73, neither of which can be amended except by Congress.

The provisions referred to are unnecessary for the due administration of county government, as section 482 provides that it is "the intention of this act that in all cases where by this act any county officer or board is charged with the performance of any duties heretofore performed by Territorial officials the use of all property heretofore used by such Territorial officials, for the discharge of such duties shall be transferred to such county officer or board."

Chapter 69, relating to the transfer of Territorial waterworks to the counties where such waterworks are situated, is of doubtful legality as being inconsistent with section 91 of the organic act above referred to, for the following reason: Although under the provision of the organic act (section 56) authorizing the legislature to create counties and town and city municipalities * * * and provide for the government thereof, such public property belonging to the United States but held by the Territorial government which is obviously necessary for the internal administration of such subordinate governments, may be turned over to such governments for such purpose, the legislature has no power to go further, and the Territorial government may not, under the responsibility imposed upon it by section 97 and section 73, surrender such property as is not necessary for the internal administration of such subordinate governments.

It can not be reasonably argued that the conduct of waterworks is essential to the administration of county or municipal governments. It is a common status in many cities on the mainland that the water used by the inhabitants for domestic purposes is furnished by private companies.

The same reasoning applies to the proposed transfer of the apparatus and equipment used by the Territorial government in lighting streets and public buildings, as provided in chapter 70.

Section 171 provides that "the duties required by the provisions of chapter 19 of the civil laws of 1897, to be performed by the commissioner of boundaries, shall be performed by the county surveyor of the county in which the lands in question are situate."

Section 172 provides that the fees to be paid such commissioner of boundaries shall be paid into the county treasury.

These sections attempt to amend section 73 of the organic act, which provides that the laws of Hawaii relating to the settlement of boundaries, except as changed by such act, "shall continue in force until Congress shall otherwise provide."

Section 384 provides that the Territorial board of public institutions shall provide for the care, maintenance, and employment of all inmates confined in any penal "institutions in the Territory."

This provision conflicts with the twenty-second division of section 22, which gives county boards of supervisors jurisdiction and power to provide for the working of prisoners confined in county jails under conviction of misdemeanor; and also with division 6 of section 90, which provides that the county sheriff shall "take charge of and keep the county jail and prisoners therein."

Section 483 provides that "immediately after the passage of this act it shall be the duty of the Territorial board of public institutions by this act provided for to organize in the manner required herein."

As other provisions of the act refer to the 4th of January, 1904, as the time when such board shall begin to exercise its powers, the provision of section 483 must contain a mistake as to the time for its organization, which should be January 4, 1904.

There is some vagueness in the act as to the status of the superintendent of public works after the installation of county governments. I would recommend definite legislation making him the executive officer of the Territorial board of public institutions.

In view of the foregoing suggestions, I recommend immediate legislation amending the county act in accordance therewith.

A bill carrying out a portion of these recommendations was passed by the senate but failed in the house.

A more careful reading of the act discovers other defective provisions. A Territorial board of public institutions is created in chapter 64, to be composed of the governor, secretary, treasurer, auditor, superintendent of public instruction, and attorney-general of the Territory. This chapter departs from county matters and provides for the management of certain Territorial institutions, naming the capitol and judiciary buildings, charitable, reformatory, and penal institutions established and supported by the Territory, harbors, wharves, matters of pilotage and towing, with the sweeping clause that "the board shall have power to direct the general management of all Territorial institutions." These provisions would, if carried out, withdraw the management of the two reform schools from the commissioners of public instruction, of the insane asylum, and the leper settlement at Kalawao from the board of health, of the penitentiary from the attorney-general, of the harbors from the United States, and of the wharves from the superintendent of public works.

Section 483 of the county act required that immediately after the passage of the act, the Territorial board of public institutions should organize, and sections 484 and 485 required the board as soon as organized, to take control of all matters relating to harbors, wharves, pilots, and towage, and of all property used in connection therewith, and to assume the control, management, and maintenance of the insane asylum and the executive and judiciary buildings.

The board organized on the 1st of May, and on the 4th of May notified the superintendent of public works that the board had assumed the control, management, and maintenance of the harbors, wharves, pilots and towage, and requested him to deliver up the control and to furnish the board with an inventory of all the property thereof, and a list of all the employees connected therewith. On the next day, May 5, the secretary of the board received a letter from the superintendent of public works declining to accede to this request on the grounds that by virtue of his office he was charged with the control and management of the property and the work in question, and had no power to surrender such control and management; that the board had no legal existence and therefore no right to assume such control and management as claimed, that that part of the county act purporting to establish a board of Territorial institutions was illegal in that it was in contravention of section 45 of the organic act, which requires that each law shall embrace but one subject which shall be expressed in its title; that the whole act was illegal for the same reason, in that it contains more than one subject of legislation, to wit, section 267 providing for Territorial revenues, section 269 providing for Territorial charges, sections 381 to 391 creating a board of public institutions, section 407 appropriating all existing waterworks and systems, sections 415 and 416 appropriating all property used by the Territory in lighting streets and public buildings, section 417 appropriating all public markets, sections 476 to 482 appropriating and transferring property belonging to the Territorial government to the counties, sections 483 to 487 providing for the organization of the board of public institutions, and chapter 19 making appropriations of Territorial funds for the support of counties; that the legislature is without authority to modify or change the form of the Territorial government as established by the organic act, and that the board sought to be created by the county act, is illegal in that the power of appointment of members of boards of a public character is vested in the governor by section 80 of the organic act.

The board then instructed the attorney-general to bring legal proceedings against the superintendent of public works to compel him to conform to the provisions of the county act bearing on the question, and to the demand of the board. Such proceedings were begun in the circuit court in the form of an application for a writ of mandamus to the superintendent of public works. The case was heard and judgment given for defendant on the ground that "all the sections of the county act which relate to the board of public institutions are repugnant to section 80 of the organic act and therefore void; and that they are not so intimately connected with other parts of said county act as to invalidate the latter, but that on the contrary the rest of the said county act is severable and can stand without the invalid portions." An appeal was taken from this decision to the supreme court, and the case is still pending in that court.

Section 80 of the organic act referred to by the defendant and the court, provides among other things that the governor shall nominate and, by and with the advice and consent of the senate, appoint the members of all boards of a public character that may be created by law, and may make such appointments when the senate is not in session by granting commissions which shall, unless such appointments are confirmed, expire at the end of the next session of the senate.

The provisions of the county act appropriating certain property, under the present control of the government of the Territory, raises some embarrassing questions. The greater part of this property is covered by the provisions of section 91 of the organic act, which places its control and management in the government of the Territory of Hawaii, until otherwise provided for by Congress, or taken for the uses and purposes of the United States. This enactment suggests the question whether these provisions, transferring such property from the control of the government of the Territory to the subordinate governments created by the legislature, require the approval of Congress.

These provisions transferring public property to the counties were evidently intended by the legislature as grants of ownership or title. Section 477 of the county act referring to the transfer of jails and property used in connection therewith, says, "all property so transferred shall be the property of the county and subject to the control of the board of supervisors of such county." A similar provision appears in section 476 in relation to roads and bridges. Section 22, division 6, authorizes county supervisors to sell at public auction any property belonging to the county not required for public use. Jail property is mainly real estate, a large part of the public waterworks, of the fire department property, of the public electric-lighting plant for Honolulu, and of the public markets are also real estate. Such provisions for transfer of public landed property being inconsistent with section 73 of the organic act which continues in force Hawaiian land laws until Congress shall change them would seem to require for their validity the approval of Congress.

Section 171 purports to transfer the duties and authority of the commissioners of boundaries to the surveyors of the respective counties. As the laws providing for the boundary commissioners are a part of the Hawaiian land laws continued in force by section 73 of the organic act, this provision must also be invalid unless approved by Congress.

It would appear from these references to the organic act that the transfer of such real estate as is necessary to the administration of county affairs should have been a transfer of the use only in the nature of a trust.

CARMEN PROMISES FULL SUCCESS

The success of "Carmen," to judge by last evening's rehearsal, seems now assured. The rich melodies of the singers and the harmonious counterpoint of the orchestra now go swingingly together with the animated precision that invariably attends performances given by musicians who practice their art for the love of it.

Annis Montague Turner is indefatigable in her work of training and coaching and seems to have inspired everybody with her own vigor and faculty of interpretation. Everyone is working with a will and the rehearsals show that all the difficulties have been mastered.

The amateurs will now be allowed to rest upon their present laurels until Monday evening when a general rehearsal will take place to be followed by the dress rehearsal proper on Tuesday.

The seat sale opens on Monday morning at Wall, Nichols Co. Many requests for seats have been made and there promises to be a long line on hand at nine o'clock.

THE VOICE OF THE PEOPLE

Editor Advertiser: Well, well, well, but we are in a pretty snarl over the County Act and in a way, Mr. Editor, which you predicted in large type. Congress is taking the Act in hand, not to ratify it, for, since the Supreme Court's decision we have no County Act to ratify, but to use it as the basis for a new Federal enactment which will take the larger powers of home rule completely out of our hands.

Wouldn't that jar people who sought the County Act so as to get more power for the public? Wouldn't it hurt those who believed in the new law as a means of getting away from centralization? For if Congress enacts a Federal County law it cannot constitutionally delegate the power of amendment to a local legislature but must keep such matters in its own hands. As for centralization, is that of Congress to be preferred to that of our own legislature and Territorial government?

As things stand, or will stand if Congress goes ahead, we cannot amend the most trivial phase of the Act without going 5000 miles to a law-making body which is buried to the shoulders in more important work. If we want to raise a milkman's license or lower it; if we want to expunge the sportsman's license; if we want to strengthen the powers of the Supervisors for the regulation of nuisances; if we want to exercise the commonest legislative privileges of a self-governing county not specifically conferred by the Federal enactment, back to Congress we must go and take our chances. And yet some of us hurrahed at Town Meeting for a reference of the County bill to Washington because we wanted more independence, more home rule, more decentralization!

Let me repeat: The late County Act, if adopted by Congress will not be our County law but a special County law of the United States. Nor will it be the same, in its Federal form, as we made it in its Territorial form. Congress proposes to take out and add to it. That body would remove the anti-carpetbagger clauses; it objects to our methods of taxation; it is inclined to adopt all of Gov. Dole's recommendations including the one expressing his dissent to the transfer of Territorial property, especially that in the hands of road authorities, to the counties. As the debate proceeds one man will inject something into the law that he knows would be good for Tennessee, another, something that he has seen work well in Rhode Island, another, a clause that pleased the whiskered grangers of Kansas and a few to please people who don't like Hawaii; and the result will be a crazy quilt of a County law under which we will have a nightmare whenever we go to sleep.

And yet we are all hurrahing for Hatch and Breckons and the rest of them and assuring each other in simple, not to say vealy confidences, that Congress, like the King, can do no wrong. So let's all stand by while the Devil takes the hindmost.

O. P. S.

THE GALBRAITH CONSPIRACY.

Editor Advertiser: Justice Galbraith's attacks on his Republican associates of the Supreme Court mark the introduction, for the first time, of Democratic strategy to the judicial affairs of the Territory. Galbraith is a Democrat who was appointed as such by President McKinley so as to save the Supreme bench of the Territory from the reputation of being a partisan court. The Hawaiian public will agree with the conclusion, I think, that he has been a judge in politics as well as a politician in the judgeship; and that he is now doing the best he can, from motives of a party as well as a personal sort, to bring odium upon high Republican appointees who are his colleagues in ermine.

The quadrennial election is coming on in which expansion will be put on trial. Everything which might be twisted to show that the Republicans have made a bad fist in the country's insular possessions, will be utilized in the Democratic campaign. How glibly it might be said that President McKinley elevated to the bench of Hawaii and President Roosevelt sustained there, two characterless Republican adventurers who made decisions to order for their friends; and that only the presence of a noble Democratic jurist, unsullied and unbought, kept the Supreme Court of this Territory from becoming a mere bartering ground where injustice was exchanged for stock.

Doubtless Galbraith wishes to pose for all he is worth as the hope of the Judicial situation here, so, if a Democratic President should be elected next fall, he would be called upon to consult with the new administration as to the court patronage of the Islands. As a politician by nature and a carpet-bagger by training, he finds these possibilities greatly to his liking. He now knows that he cannot get a reappointment from President Roosevelt and has let his organ, the Bulletin, announce his withdrawal from the race. But if a Democratic President should come in, behold Galbraith demanding the removal of Frear and Perry—who will probably be reappointed—upon the charges already formulated by himself. Then, if he succeeded, what more available candidate for Chief Justice would there be than Galbraith with the possibility of his old "law" partner Little, and that able tumefaction Gear as Associate Justices.

Here is the political game as it is working, and whether it comes out or not will depend on the result of the Presidential contest.

VIGILANTE.

ONLY AN INNOCENT QUESTION.

Editor Advertiser: I merely want to know you know, apropos of the developments in the "Fidelity" case if the "Gear hui" ever goes into anything that will stand the microspope—politically, professionally or commercially?

MAHATMA.